



## DEPARTMENT OF COMMERCE

### International Trade Administration

[A 580-809]

#### **Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Notice of Court Decision Not in Harmony with the Results of Antidumping Administrative Review; Notice of Amended Final Results**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On August 24, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in *Hyundai Steel Company v. United States*, Consol. Court No. 18-00154, sustaining the U.S. Department of Commerce (Commerce)'s fourth remand results pertaining to the administrative review of the antidumping duty (AD) order on circular welded non-alloy steel pipe from the Republic of Korea (Korea) covering the period November 1, 2015, through October 31, 2016. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margins assigned to Hyundai Steel Company and SeAH Steel Corporation.

**DATES:** Applicable September 3, 2022.

**FOR FURTHER INFORMATION CONTACT:** Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0410.

#### **SUPPLEMENTARY INFORMATION:**

##### Background

On June 13, 2018, Commerce published its *Final Results* in the 2015-2016 AD administrative review of circular welded non-alloy steel pipe from Korea. Commerce found that a particular market situation (PMS) existed in Korea and calculated weighted-average dumping

margins of 30.85 percent for Hyundai Steel Company and 19.28 percent for SeAH Steel Corporation.<sup>1</sup> Commerce also calculated a combined assessment rate for Hyundai's affiliated importers.

Hyundai Steel Company and SeAH Steel Corporation appealed Commerce's *Final Results*. On November 25, 2019, the CIT remanded the *Final Results* to Commerce, finding that: (1) Commerce's determination of the existence of a PMS in the *Final Results* is unsupported by substantial evidence and remanded the issue to Commerce for further proceedings; and (2) Commerce's departure from its normal practice of calculating importer-specific assessment rates with respect to Hyundai Steel Company was unsupported by substantial evidence and remanded the issue to Commerce for further proceedings.<sup>2</sup> In its first remand redetermination, issued on February 26, 2020, Commerce further considered its PMS determination and recalculated Hyundai Steel Company's assessment rates on an importer-specific basis.<sup>3</sup>

The CIT remanded for a second time, ordering Commerce to explain the statutory authority to conduct a cost-based PMS analysis when normal value is based on home market sales and to adjust the cost of production (COP) for purposes of the sales-below-cost test.<sup>4</sup> In its second remand redetermination, issued on February 2, 2021, Commerce provided its interpretation of the statutory authority in accordance with the Court's order.<sup>5</sup>

The CIT remanded for a third time, ordering Commerce to reconsider its PMS determination and adjustment in light of its opinion that Commerce may not adjust the COP when using normal value based on home market sales, and that Commerce is not authorized to adjust the COP for purposes of the sales-below-cost test.<sup>6</sup> In its third remand redetermination,

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<sup>1</sup>See *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 27541 (June 13, 2018) (*Final Results*).

<sup>2</sup> See *Hyundai Steel Company v. United States*, 415 F. Supp. 3d 1293 (CIT 2019).

<sup>3</sup> See *Final Results of Redetermination Pursuant to Court Remand Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, Consolidated Court No. 18-00154, Slip Op. 19-148 (CIT November 25, 2019), dated February 26, 2020 (*First Remand*), available at <https://access.trade.gov/resources/remands/19-148.pdf>.

<sup>4</sup> See *Hyundai Steel Company v. United States*, 483 F. Supp. 3d 1273 (CIT 2020).

<sup>5</sup> See *Final Results of Redetermination Pursuant to Court Remand Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, Consolidated Court No. 18-00154, Slip Op. 20-168 (CIT November 23, 2020), dated February 2, 2021 (*Second Remand*), available at <https://access.trade.gov/Resources/remands/20-168.pdf>.

<sup>6</sup> See *Hyundai Steel Company v. United States*, 531 F. Supp. 3d 1344 (CIT 2021).

issued on September 8, 2021, Commerce recalculated the weighted-average dumping margin of Hyundai Steel Company with no adjustment to account for the PMS that Commerce had found to have existed during the period of review; Commerce also recalculated the rate for the second mandatory respondent, Husteel Co., Ltd., for the sole purpose of calculating the rate for SeAH Steel Corporation, the non-examined company which is a party to this litigation but, in recalculating Husteel Co., Ltd.'s rate, Commerce continued to apply a PMS adjustment for normal value in situations where normal value was determined based on constructed value.<sup>7</sup>

The CIT remanded for a fourth time, holding that Commerce calculated SeAH Steel Corporation's dumping margin improperly using an average of dumping rates based, in part, on a PMS determination that was unsupported by substantial evidence, and ordering Commerce to recalculate SeAH Steel Corporation's dumping margin in accordance with its opinion.<sup>8</sup> In its final remand redetermination, issued in August 2022, Commerce, under respectful protest, recalculated the weighted-average dumping margin for SeAH Steel Corporation without making a cost-based PMS adjustment.<sup>9</sup> The CIT sustained Commerce's final redetermination.<sup>10</sup>

### Timken Notice

In its decision in *Timken*,<sup>11</sup> as clarified by *Diamond Sawblades*,<sup>12</sup> the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's August 24, 2022, judgment constitutes a final decision of the CIT that

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<sup>7</sup> See *Final Results of Redetermination Pursuant to Court Remand*, Consolidated Court No. 18-00154, Slip Op. 21-88 (CIT July 19, 2021), dated September 8, 2021 (*Third Remand*), available at <https://access.trade.gov/resources/remands/21-88.pdf>.

<sup>8</sup> See *Hyundai Steel Company v. United States*, Court No. 18-00154, Slip Op. 22-67 (CIT June 15, 2022).

<sup>9</sup> See *Final Results of Redetermination Pursuant to Court Remand Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, Consolidated Court No. 18-00154, Slip Op. 22-67 (CIT June 15, 2022), dated August 2, 2022, available at <https://access.trade.gov/Resourses/remands/22-67.pdf>. In the *Third Redetermination*, Commerce recalculated the weighted-average dumping margin of Hyundai Steel with no adjustment to account for the PMS. See *Third Redetermination* at 10.

<sup>10</sup> See *Hyundai Steel Company v. United States*, Court No. 18-00154, Slip Op. 22-98 (CIT August 24, 2022).

<sup>11</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>12</sup> See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

is not in harmony with Commerce's *Final Results*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

#### Amended Final Results of Review

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to Hyundai Steel Company and SeAH Steel Corporation as follows:

<b>Company</b>	<b>Margin (Percent)</b>
Hyundai Steel Company	12.92
SeAH Steel Corporation	9.77

#### Cash Deposit Requirements

Because Hyundai Steel Company and SeAH Steel Corporation have a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

#### Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that: (1) were produced by Hyundai Steel Company (also known as Hyundai Steel Corporation and Hyundai Steel and the successor-in-interest to Hyundai HYSCO) and exported by Hyundai Steel Company or Hyundai Corporation, and imported by Hyundai Steel USA, Inc. or Hyundai Corporation USA; or (2) were produced and/or exported by SeAH Steel Corporation; and were entered, or withdrawn from warehouse, for consumption during the period November 1, 2015, through October 31, 2016. These entries will remain enjoined pursuant to the terms of the injunctions during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise that: (1) were produced by Hyundai Steel Company (also known as Hyundai Steel Corporation and Hyundai Steel and the successor-in-interest to

Hyundai HYSCO) and exported by Hyundai Steel Company or Hyundai Corporation, and imported by Hyundai Steel USA, Inc. or Hyundai Corporation USA; or (2) were produced and/or exported by SeAH Steel Corporation in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis*. Where an import-specific *ad valorem* assessment rate is zero or *de minimis*,<sup>13</sup> we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

#### Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e), and 777(i)(1) of the Act.

Dated: August 25, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

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<sup>13</sup> See 19 CFR 351.106(c)(2).